

May 2, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

In re the Detention of:

PATRICK BRYAN TRUXILLO,

Petitioner.

No. 48771-3-II

UNPUBLISHED OPINION

MELNICK, J. — Patrick Bryan Truxillo appeals the trial court’s remedial sanction of a stay of proceedings imposed after Truxillo refused to take a polygraph test. This test was ordered by the court following the State’s petition for civil commitment of Truxillo as a sexually violent predator (SVP) under chapter 71.09 RCW. Truxillo contends the trial court erred by imposing remedial sanctions under RCW 7.21.030(c) without first finding other statutory sanctions ineffectual. We affirm.

FACTS

Near the completion of Truxillo’s sentence for rape in the first degree, the State initiated proceedings to civilly commit him as an SVP. The trial court ordered Truxillo to complete a clinical interview and psychological testing by the State’s evaluator. During the clinical interview, Truxillo denied ever experiencing arousal to coercion, despite a history of sexual assault.

The State filed a motion to require penile plethysmograph and polygraph testing. The trial court reserved ruling on the penile plethysmograph testing but ordered Truxillo to submit to polygraph testing pursuant to RCW 71.09.050(1). Truxillo refused. The State moved to hold Truxillo in contempt. At the contempt hearing, the trial court heard argument that lesser coercive sanctions would fail because Truxillo was indigent and already incarcerated. Specifically, the State cited *In re Detention of Young*, 163 Wn.2d 684, 185 P.3d 1180 (2008), arguing that the *Young* court “looked at other alternatives, sanctions, including whether a progressive fine would be appropriate . . . [Young] was indigent so it would not have been appropriate. I believe that is the same situation as in this case.” Report of Proceedings (RP) (Feb. 11, 2016) at 27. The State continued that another sanction would be imprisonment, “but since [Truxillo] is . . . confined at the [Special Commitment Center] that would also not coerce him in to [sic] complying with the court order.” RP (Feb. 11, 2016) at 27.

The trial court found Truxillo in contempt for intentional disobedience of the court’s order and “adopt[ed] the State’s recommendation” and, as a remedial sanction, stayed the proceedings pending Truxillo’s compliance. RP (Feb. 11, 2016) at 35. The trial court did not make an express finding that other sanctions would be ineffective. The court concluded, “The appropriate remedy for [Truxillo’s] disobedience of a lawful court order is remedial sanctions designed to coerce his compliance with the evaluation order.” Truxillo appeals.

ANALYSIS

I. EXPRESS FINDING OF FACT

Truxillo argues the trial court erred by staying Truxillo’s civil commitment proceedings without expressly finding that other sanctions would be ineffectual. We disagree.

We review sanctions for noncompliance with court orders for an abuse of discretion. *Young*, 163 Wn.2d at 694. Discretion is abused when it is manifestly unreasonable or exercised on untenable grounds. *Young*, 163 Wn.2d at 694. We focus on whether the trial court was required to make express written findings before imposing sanctions in this case.

Under RCW 7.21.030(1), a trial court can impose a “remedial sanction” on a person for contempt of court. A “[r]emedial sanction” is “a sanction imposed for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person’s power to perform.” RCW 7.21.010(3). After a finding of contempt, the court may impose one or more of the following remedial sanctions:

- (a) Imprisonment if the contempt of court is of a type defined in RCW 7.21.010(1)
- (b) through (d). The imprisonment may extend only so long as it serves a coercive purpose.
- (b) A forfeiture not to exceed two thousand dollars for each day the contempt of court continues.
- (c) An order designed to ensure compliance with a prior order of the court.
- (d) Any other remedial sanction other than the sanctions specified in (a) through (c) of this subsection if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

RCW 7.21.030(2).

Truxillo argues that his sanctions were imposed under subsection (d), which requires the court to first “expressly find[.]” that the sanctions in subsections (a)-(c) “would be ineffectual to terminate a continuing contempt of court.” RCW 7.21.030(2)(d). Truxillo is incorrect.

Young expressly held that staying proceedings falls under RCW 7.21.030(2)(c). 163 Wn.2d at 694. In *Young*, the trial court stayed *Young*’s SVP civil commitment proceedings based on a finding of contempt for *Young*’s refusal to submit to a mental evaluation. 163 Wn.2d at 687.

The court held that “the remedial sanction of staying proceedings [is] authorized by RCW 7.21.030(2)(c).” *Young*, 163 Wn.2d at 694. RCW 7.21.030(2)(c) does not require express findings like RCW 7.21.030(2)(d). Thus, the trial court did not err in staying Truxillo’s proceedings without first expressly finding other remedies in RCW 7.21.030(2) would be ineffectual.

Even assuming the trial court’s sanctions fell under RCW 7.21.030(2)(d), any error regarding a lack of an express finding regarding other sanctions would be harmless. Where the trial court’s oral opinion and the hearing record are sufficiently comprehensive and clear that written facts would be a mere formality, the trial court’s failure to enter mandatory written findings is harmless. *Backlund v. Univ. of Wash.*, 137 Wn.2d 651, 656 n.1, 975 P.2d 950 (1999). Here, the State argued at the contempt hearing that a fine would be inappropriate because Truxillo was indigent; and imprisonment would be inappropriate because Truxillo was already confined. During its oral ruling, the court stated that it was adopting the State’s reasoning. This is sufficient to satisfy RCW 7.21.030(2)(d)’s requirement that the trial court find that other sanctions “would be ineffectual to terminate a continuing contempt of court.”

Given all, Truxillo fails to show trial court error. We, therefore, affirm the trial court’s imposed remedial sanctions.

II. APPELLATE COSTS

Next, Truxillo opposes appellate costs asserting that he does not have the ability to pay. A commissioner of this court will consider whether to award appellate costs in due course under the newly revised provisions of RAP 14.2 if the State decides to file a cost bill and if Truxillo objects to that cost bill.

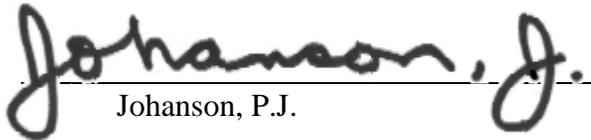
We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

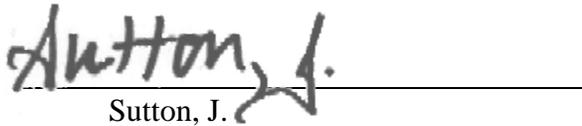


Melnick, J.

We concur:



Johanson, P.J.



Sutton, J.